IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.12.2006

Coram:

The Honourable Mr.Justice P.JYOTHIMANI

Writ Petition No.36498 of 2006

K.A.Syed Khader Oli,
Deputy Director of Horticulture,
Tirunelveli. .. Petitioner

Vs.

1. The Secretary to Government,
   Agriculture Department,
   Fort St.George,
   Chennai-9.

2. The Director of Horticulture &
   Plantation of Crops, Chennai.

3. G.Seenu,
   Deputy Director of Horticulture,
   Cuddalore.
(R3 impleaded as per Order by PJMJ
dt.11.12.06 in M.P.No.3 of 2006 in
W.P.No.36498 of 2006) .. Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus calling for the records of the respondents in connection with the impugned order passed by the first respondent in Letter No.9143/AA7/05-5 dated 31.07.2006 and quash the same and further direct the respondents to consider the claim of the petitioner for promotion as Joint Director of Horticulture for the year 2004-05 without reference to the pending disciplinary proceedings initiated against the petitioner in 1) No.B1/16588/92 dated 19.12.1995 2) and Memo No.B1/16588/92 dated 08.05.2004 3) TDP Case No: 14/2005 Ref.852/2005/A1 dated 25.01.2006 and promote the petitioner as Joint Director of Horticulture and grant all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkataramani

For Respondents: Mr.D.Srinivasan, GA for R1 & R2
Mr.Vijaya Narayanan, Sr.Counsel
for Mr.R.Parthiban for R3

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O R D E R

The writ petition is filed challenging the order of the first respondent dated 31.07.2006, in which the first respondent has informed the petitioner that his name could not be considered for promotion to the post of Joint Director of Horticulture for the year 2004-2005, since a 17(b) case and Vigilance case are pending against him.

2. The admitted case of the petitioner is that there were many charges framed against him and in respect of a charge framed on 01.12.1991, the Government, by Proceeding dated 04.07.2002, has dropped the same. However, there are 3 more charges pending against the petitioner, one in respect of Charge Memo issued on 19.12.1995 in which case there is a direction by the Agriculture AAVII Department, Government of Tamil Nadu, appointing an Enquiry Officer on 26.10.1999 and directing the Enquiry Officer to complete the enquiry within a stipulated time. However, it is the case of the petitioner that the Enquiry Officer has conducted enquiry, but no report of Enquiry Officer has been made.

3. In respect of the next charge pending against the petitioner, namely, the charge dated 08.05.2004, it is the case of the petitioner, that a co-delinquent has approached this Court and obtained an order of stay. Admittedly, in respect of the said charge dated 08.05.2004, no Enquiry Officer has been appointed so far.

4. There is yet another charge pending against the petitioner dated 25.01.2006, before the Tribunal for Disciplinary Proceedings. It is also the case of the petitioner that the said charge pending before the Tribunal is for the period relating to the year 1987. Admittedly, the matter is pending with the Tribunal for Disciplinary Proceedings and for this charge dated 25.01.2006, the petitioner is yet to submit his explanation. Eventhough in the writ petition, the impugned order of the first respondent dated 31.07.2006 is challenged whereby the first respondent has informed the petitioner that the petitioner could not be considered for the next promotion to the post of Deputy Director of Horticulture for the year 2004-2005, since the 17(b) charges are pending against him, the learned counsel for the petitioner, Mr.K.Venkataramani would fairly submit that since these three charges are pending against the petitioner, a direction may be given to the respondents to complete the Disciplinary Proceedings in respect of the said charges, within a stipulated time.

5. In the mean time, the person who was promoted as Joint Director of Horticulture in the year 2004-2005, by order of the Government in G.O.Ms.No.270, Agriculture Dept., dated 09.10.2006, has filed a petition to implead himself as a party and this Court has

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already ordered the said impleading petition. A petition has also been filed to vacate the order of stay. Learned Senior Counsel, Mr.Vijaya Narayanan fairly stated that as far as the impleading party is concerned, he has been promoted as Joint Director of Horticulture for the year 2004-2005. The learned Senior Counsel also submitted that an interim order has been passed by this Court, wherein a direction has been given to keep one post of Joint Director of Horticulture, vacant. As there is only one post of Joint Director of Horticulture, he has filed the petition for vacating the stay so as to enable the impleading party to take charge of the said post. The learned Govt. Advocate also submitted that if a time limit is given, all the three enquiries will be completed and thereafter the claim of the petitioner will be considered.

6. After hearing the arguments advanced by the learned counsel for the petitioner, learned Govt. Advocate appearing on behalf of the first and second respondents and the learned Senior Counsel appearing for the impleading party, the writ petition may be disposed of with a direction to the respondents to complete all the abovesaid Disciplinary Proceedings pending against the petitioner by giving adequate time to the petitioner to submit his explanation, and pass appropriate final orders within a period of six months from the date of receipt of a copy of this order and thereafter consider the claim of the petitioner for the next promotion. Interim order passed by this Court on 29.09.2006 in M.P.No.2 of 2006, which was subsequently extended on 31.10.2006, is vacated in W.V.M.P.No.4 of 2006 to enable the impleading party to take charge as per the order of the first respondent dated 09.10.2006 and hence, M.P.No.2 of 2006 is dismissed. No costs. Consequently, M.P.No.1 of 2006 is closed.

7. It is made clear that the respondents shall stick on to the time limit which is specified in this order and in the event, the respondents not completing the enquiry within the stipulated period, it is open to the respondents to consider the claim of the petitioner for promotion as per the judgment of the Hon'ble Apex Court reported in (1995) 2 SCC 570 in the case of State of Punjab and Others Vs. Chaman Lal Goyal, without prejudice to the further orders that may be passed in the Disciplinary Proceedings.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary to Government,
   Agriculture Department,
   Fort St.George,
   Chennai-9.

2. The Director of Horticulture &
   Plantation of Crops, Chennai.

1 CC TO MR.K. VENKATARAMANI, ADVOCATE SR 62041

1 CC TO MR.R. PARTHIBAN, ADVOCATE SR 61737

1 CC TO THE G.P., SR 62016

W.P.No.36498 of 2006

JSK(CO)

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